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12 | Attorneys for Plaintiff and the Class

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

17 KEVIN RISTO, on behalf of himself
18 and all others similarly situated,

19 Plaintiff,

20 | v.

21 SCREEN ACTORS GUILD-
22 AMERICAN FEDERATION OF
23 TELEVISION AND RADIO
24 ARTISTS, a Delaware corporation;
25 AMERICAN FEDERATION OF
26 MUSICIANS OF THE UNITED
27 STATES AND CANADA, a California
28 nonprofit corporation; RAYMOND M.
HAIR, JR., an individual, as Trustee of
the AFM and SAG-AFTRA Intellectual
Property Rights Distribution Fund;
TINO GAGLIARDI, an individual, as
Trustee of the AFM and SAG-AFTRA
Intellectual Property Rights Distribution
Fund; DUNCAN CRABTREE-

CASE NO. 2:18-cv-07241-CAS-PLA
CLASS ACTION

FIRST AMENDED CLASS ACTION COMPLAINT FOR:

- (1) BREACH OF FIDUCIARY DUTY;**
- (2) MONEY HAD AND RECEIVED;**
- (3) DECLARATORY RELIEF; and**
- (4) CONVERSION**

DEMAND FOR JURY TRIAL

1 IRELAND, an individual, as Trustee of
2 the AFM and SAG-AFTRA Intellectual
3 Property Rights Distribution Fund;
4 STEFANIE TAUB, an individual, as
5 Trustee of the AFM and SAG-AFTRA
6 Intellectual Property Rights Distribution
7 Fund; JON JOYCE, an individual, as
8 Trustee of the AFM and SAG-AFTRA
9 Intellectual Property Rights Distribution
Fund; BRUCE BOUTON, an
individual, as Trustee of the AFM and
SAG-AFTRA Intellectual Property
Rights Distribution Fund; and DOE
DEFENDANTS 1-10,

Defendants.

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1 Plaintiff Kevin Risto, on behalf of himself, and all others similarly situated,
2 alleges as follows upon personal knowledge as to Plaintiff's own conduct and on
3 information and belief as to all other matters based on an investigation by counsel,
4 such that each allegation has evidentiary support or is likely to have evidentiary
5 support upon further investigation and discovery:

6 **FACTUAL BACKGROUND**

7 **A. STATUTORY FRAMEWORK**

8 1. 17 U.S.C. § 106 grants the owner of a copyright in a sound recording
9 the exclusive right to perform and reproduce the sound recording publicly by means
10 of a digital audio transmission. As a result of the Digital Performance Rights in
11 Sound Records Act of 1995 and the Digital Millennium Copyright Act of 1998, 17
12 U.S.C. § 114 provides a statutory license to perform and reproduce sound
13 recordings. SoundExchange, an affiliate and former subsidiary of the Recording
14 Industry Association of America, is designated as the sole entity in the United States
15 authorized to collect these royalties from statutory licenses for the digital
16 performances of sound recordings.

17 2. Under 17 U.S.C. § 114(g), 50% of digital performance royalties are
18 payable to the copyright owners of the sound records, 45% are payable to the
19 featured artists, 2.5% are payable to the non-featured musicians (also known as
20 session musicians) and 2.5% are payable to the non-featured vocalists (also known
21 as session vocalists) (collectively referred to herein as "non-featured performers").

22 3. The 5% of the digital performance royalties payable to non-featured
23 performers are sometimes collectively referred to herein as the "Royalties."

24 4. The statute requires payment of the Royalties to non-featured
25 performers regardless of their union membership in any or all of the three major
26 unions: the American Federation of Musicians of the United States and Canada
27 ("AFM"), or SAG-AFTRA (the surviving entity after the 2012 merger of the Screen
28 Actors Guild ("SAG") and the American Federation of Television and Radio Artists

1 (“AFTRA”).

2 **B. ESTABLISHMENT OF THE FUND**

3 5. The AFM and SAG-AFTRA Intellectual Property Rights Distribution
 4 Fund (the “Fund”) is the name given to the I.R.C. § 501(c)(6) nonprofit organization
 5 which oversees a trust fund created to receive and distribute Royalties or other
 6 remuneration to artists from SoundExchange and other relevant collecting societies,
 7 rights organizations and other appropriate entities in order to comply with the
 8 statutory scheme.

9 6. Pursuant to the statutes, the Fund is obligated to perform its duties
 10 without regard to union membership.

11 7. The Fund was established through an Agreement and Declaration of
 12 Trust dated September 16, 1998 between the American Federation of Musicians of
 13 the United States and Canada (“AFM”) and the American Federation of Television
 14 and Radio Artists (“AFTRA”).

15 8. The Agreement and Declaration of Trust dated September 16, 1998 was
 16 amended and restated on July 26, 2012 after the merger of the Screen Actors Guild
 17 (“SAG”) and AFTRA. The AFM and SAG-AFTRA are collectively referred to
 18 herein as “Unions.”

19 9. As of 2013, the Fund’s Trustees consist of three board members of the
 20 AFM union and three board members of the SAG-AFTRA union, as well as two
 21 rank-and-file members, one from each Union. The Trustees are not compensated by
 22 the Fund for the performance of their duties. The Trustees are responsible for
 23 implementing the statutory rights of the non-featured performers, collecting the
 24 Royalties due to non-featured performers and making payment to the non-featured
 25 performers.

26 10. Pursuant to the Agreement and Declaration of Trust, the Trustees owe a
 27 fiduciary duty to the beneficiaries of the Fund and are obligated to protect the
 28 property held by the Fund.

1 **C. IMPLEMENTATION OF THE SERVICE FEE FOR THE BENEFIT
2 OF THE UNIONS**

3 11. The Fund entered into a Data Purchase and Services Agreement dated
4 July 22, 2013 (the “Services Agreement”) with the Unions. Pursuant to the Services
5 Agreement, “the Fund shall pay each Union, within 30 days after the conclusion of
6 each of the Fund’s distribution cycles, 3% of the amount distributed by the Fund in
7 such distribution cycle.... Such payment shall constitute complete compensation of
8 the Unions and their personnel for providing the data and services contemplated by
9 this Agreement. There shall be no additional charges or expense reimbursement
10 associated with the Unions’ provision of the data and services contemplated by this
11 Agreement.”

12 12. This 3% service fee shall be referred to herein as the “Service Fee.”

13 13. The Service Fee was approved by the Defendants named herein. These
14 Defendants were Trustees of the Fund but were acting with deep conflicts of interest
15 to the benefit of the Unions, by which they are employed.

16 14. This Service Fee reduces the amount of capital in the Fund and
17 therefore reduces the amount of money available to the beneficiaries of the Fund.

18 15. Defendants violated their duties to the Trust when authorizing the
19 Service Fee and diverting funds away from the Fund and to the Unions.

20 16. The Service Fee is purportedly paid to the Unions for the provision of
21 certain data and representation of “Fund interests.” However, all of the obligations
22 conferred on the Unions in the Service Agreement were activities that the Unions
23 were already performing as a benefit to its members. No new consideration was
24 provided by the Unions in exchange for the Service Fee. The Unions even provide
25 the exact same information to other entities, including but not limited to the AFM
26 and Employers Pension Fund, the Film Musicians Secondary Market Fund, and the
27 Sound Recording Special Payments Fund, at no charge. The Unions only maintain
28 data regarding their members, which makes the Service Fee particularly egregious

1 as to non-union members. At no time has any cost accounting been done to ensure
 2 that the Service Fee is justified, reasonable, or rightful.

3 17. In some instances, the Unions have not even fulfilled their obligations
 4 under the self-serving Services Agreement. For example, despite what the Services
 5 Agreement states, SAG-AFTRA has declined to provide access to member
 6 databases, session reports and “B-forms,” or other similar databases. The Trustees
 7 have not taken action to address SAG-AFTRA’s non-compliance.

8 18. None of the activities set forth in the Services Agreement are for the
 9 benefit of non-Union, non-featured performers.

10 19. In addition to the Service Fee, and contrary to the terms of the Service
 11 Agreement, the Trust pays the expenses of the Defendant Trustees.

12 20. The Trustees of the Fund have significant conflicts of interest with the
 13 beneficiaries of the Fund and have used the Fund to benefit the Unions instead of
 14 the beneficiaries it was intended to represent.

15 21. Plaintiff is informed and believes, and thereon alleges, that in 2016
 16 alone, the Fund paid \$1,743,712.00 to the Unions, and the amount continues to
 17 increase each year as the Service Fee is collected as a continuing violation.

18 22. Of note, the general counsel for the Fund, Patricia Polach, has
 19 simultaneously served as counsel for (1) the Fund; (2) AFM and AFTRA; and (3)
 20 SAG-AFTRA, creating a massive and obvious conflict of interest. Ms. Polach’s
 21 role in the creation of the Fund and implementation of the Service Fee will be
 22 thoroughly investigated by Plaintiff in connection with this Action.

23 23. Plaintiff and the Class seek equitable, declaratory, and injunctive relief
 24 against the Trustees requiring them to: (1) revert back to the Fund the 3% Service
 25 Fee for the distribution cycles following July 22, 2013; (2) cease the collection of
 26 the 3% Service Fee on all future distribution cycles; and (3) declare the Data
 27 Purchase and Services Agreement void and unenforceable.

28

JURISDICTION AND VENUE

2 24. This Court has jurisdiction over this action. The Fund is located in
3 Valley Village, California, and a substantial part of the acts and events giving rise to
4 Plaintiff's and the Class' claims occurred in Los Angeles County, in that the
5 Trustees and the Unions have diverted funds from the Fund in this County, and
6 because upon information and belief, all meetings, decisions, and accountings are
7 held and performed in this County.

8 25. Further, SAG-AFTRA is a Delaware corporation authorized to conduct
9 business and conducting business in the County of Los Angeles, State of California.
10 Defendant AFM is a mutual benefit corporation (also known as a nonprofit
11 corporation) that is organized and existing under the laws of the State of California
12 and is authorized to conduct business and is conducting business, in the County of
13 Los Angeles, State of California.

14 26. Venue is proper in this Court because a substantial part of the acts
15 giving rise to Plaintiff's claims occurred in this venue.

PARTIES

17 27. Plaintiff Kevin Risto (“Plaintiff”) is a resident of Las Vegas, Nevada.
18 Mr. Risto is not a Union member, but collects from the Fund as a non-featured
19 musician on artist Fantasia’s “When I See U.” Plaintiff has written and produced
20 songs for Justin Bieber, Frank Ocean, 50 Cent, Jennifer Lopez, and many other
21 award-winning artists. Plaintiff received a Grammy award, the music industry’s
22 highest honor, for his work on Frank Ocean’s “Channel Orange” album.

23 28. Defendant SAG-AFTRA is a corporation organized and existing under
24 the laws of the state of Delaware and is authorized to conduct business and is
25 conducting business in the County of Los Angeles, State of California.

26 29. Defendant AFM is a mutual benefit corporation (also known as a
27 nonprofit corporation) that is organized and existing under the laws of the State of
28 California and is authorized to conduct business and is conducting business, in the

1 County of Los Angeles, State of California.

2 30. Defendant Raymond M. Hair, Jr. is a resident of the State of New York
3 and a Trustee of the AFM and SAG-AFTRA Intellectual Property Rights
4 Distribution Fund. Defendant Raymond M. Hair, Jr. is also the President of the
5 American Federation of Musicians (“AFM”).

6 31. Defendant Augustino Gagliardi is a resident of the State of New York
7 and a Trustee of the AFM and SAG-AFTRA Intellectual Property Rights
8 Distribution Fund. Mr. Gagliardi serves on the Executive Committee of the
9 American Federation of Musicians (“AFM”).

10 32. Defendant Duncan Crabtree-Ireland is a resident of the City of Los
11 Angeles, State of California and a Trustee of the AFM and SAG-AFTRA
12 Intellectual Property Rights Distribution Fund. Mr. Crabtree-Ireland is the Chief
13 Operating Officer and General Counsel of SAG-AFTRA.

14 33. Defendant Stefanie Taub is a resident of the City of Los Angeles, State
15 of California. She is a former Trustee of the Fund and now serves as its Chief
16 Executive Officer. Ms. Taub also previously served as the National Manager of
17 Sound Recordings for SAG-AFTRA.

18 34. Defendant Jon Joyce is a resident of the State of California and serves
19 as the rank-and-file SAG-AFTRA Trustee of the Fund. Mr. Joyce is on the Board of
20 the SAG-AFTRA Foundation.

21 35. Defendant Bruce Bouton is a resident of the State of California and
22 serves as the rank-and-file AFM Trustee of the Fund. Mr. Boulton is on the
23 Electronic Media Oversight Committee of the AFM and is the Intellectual Property
24 Rights Committee Chair of the Recording Musicians Association, which, upon
25 information and belief, is an affiliated entity of the AFM.

26 36. The individual defendants shall be referred to collectively as the
27 “Trustee Defendants.” The entity defendants shall be referred to as the “Union
28 Defendants.”

1 37. The names and capacities of DOE Defendants 1-10 are currently
2 unknown to Plaintiff. Each of the DOE Defendants is legally responsible for the
3 unlawful acts alleged herein.

4 38. At all relevant times, each defendant was acting as an agent or
5 employee of each of the other and was acting within the course or scope of the
6 agency with knowledge and consent of the other defendants. Each of the acts and
7 omissions complained of were made known to, and ratified by, each of the other
8 defendants.

CLASS ACTION ALLEGATIONS

10 39. Pursuant to California Code of Civil Procedure § 382, Plaintiff brings
11 this action individually and on behalf of the following proposed class of persons,
12 initially defined as:

Nationwide Class:

All persons and entities, their agents, successors in interest, assigns, heirs, executors, trustees, and administrators who are and/or were non-featured musicians and non-featured vocalists.

17 40. The Class does not include Defendants; any successor or assign of
18 Defendants; or any judge to whom this case is assigned and any member of his or
19 her immediate family.

20 41. Numerosity. The Class is comprised of thousands of persons, making
21 joinder of such cases impracticable. Disposition of the claims in a class action
22 context will provide substantial benefits to the parties and the Court.

23 42. Existence and predominance of common questions. Common
24 questions of law and fact exist as to all members of the proposed Class and
25 predominate over questions affecting only individual Class members. These
26 common questions include, but are not limited to, the following, answers to which
27 are apt to drive the resolution of this litigation:

a. Whether the Trustees breached their fiduciary duties to the

1 Plaintiff and the Class;

2 b. Whether the Trustees wrongfully withheld and benefitted from
3 money due to Plaintiff and the Class;

4 c. Whether the Trustees converted funds due to Plaintiff and the
5 Class by diverting the funds to the Unions;

6 d. Whether the Trustees wrongfully retained money due to the
7 Fund;

8 e. Whether the Trustees should be enjoined from diverting the
9 Service Fee in the future;

10 f. Whether the Data Purchase and Services Agreement is void
11 and/or unenforceable in whole or in part.

12 43. Typicality. Plaintiff's claims are typical of the claims of the proposed
13 Class. Plaintiff and the Class members he proposes to represent are all non-featured
14 musicians and non-featured vocalists as all such non-featured artists have or may
15 earn digital performance royalties that are or will be collected by the Fund and
16 subject to the 3% Service Fee, giving rise to substantially the same claims.

17 44. Adequacy. Plaintiff will fairly and adequately represent and protect the
18 interests of the proposed Class. Plaintiff has no interests that are antagonistic to or
19 that irreconcilably conflict with those of the other Class members he seeks to
20 represent. Plaintiff has retained counsel competent and experienced in the
21 prosecution of class action litigation and intends to prosecute this action vigorously.

22 45. Superiority. A class action is superior to all other available methods for
23 the fair and efficient adjudication of this controversy. This litigation involves issues
24 that will require substantial and targeted discovery of sophisticated defendants and
25 could not practically be taken on by individual litigants. In addition, individual
26 litigation of Class members' claims would be unduly burdensome to the court
27 system and has potential to lead to repetitious litigation with inconsistent results. A
28 class action would achieve substantial economies of time, effort and expense, and

1 would assure uniformity of decision as to persons similarly situated without
2 sacrificing procedural fairness.

3 46. Class certification is also appropriate because Defendants have acted or
4 refused to act on grounds generally applicable to the Class, thereby making final
5 injunctive relief or corresponding declaratory relief appropriate with respect to the
6 Class as a whole.

7 47. The nature of notice to the proposed Class is contemplated to be by
8 direct mail or, if such notice is not practicable, by the best notice practicable under
9 the circumstance including email, publication in major newspapers and/or on the
10 Internet.

TOLLING AND ESTOPPEL

12 48. Any applicable statutes of limitations that might otherwise bar any of
13 Plaintiff's claims are tolled by Defendants' knowing and active concealment of the
14 wrongful diversion of monies from the corpus of the Trust to the Unions.

15 49. Defendants, as the Trustees of the Trust are therefore in a superior
16 position to know of the material issues, were under a continuous duty to disclose to
17 Plaintiff and members of the Class the true amount of funds collected by the Trust
18 and expenditures made at each distribution cycle, and the sum of money being
19 diverted to the Unions at every cycle. Plaintiffs and the members of the Class were
20 under no duty to investigate the Fund's payment of sums and had no reason to
21 believe that the Fund's Trustees would authorize a gratuitous, unjustified payment
22 of their money to the Unions. The Unions prevented the Trust from informing the
23 beneficiaries of the terms of the Data Purchase and Sales Agreement and hid the
24 Service Fee from the beneficiaries. Defendants kept Plaintiff in the dark as to
25 necessary information essential to the pursuit of his claims. Because of Defendants'
26 cover-up, proposed Class members could not have reasonably discovered the
27 substantial sum of money being diverted from the Trust to the Unions at every
28 distribution cycle. Defendants are therefore estopped from relying on any statutes

1 of limitations in defense of this action.

2 50. Plaintiff was not aware of the Service Fee or the terms of the Data
 3 Purchase and Sales Agreement because of Defendants' active concealment.
 4 Defendants did not mail to the Plaintiff, or the members of the Class, notice of the
 5 implementation of the Service Fee or the Data Purchase and Sales Agreement.
 6 Instead, Defendants implemented the Service Fee unilaterally, without notice, and
 7 then failed to provide clear, unambiguous notice of the Service Fee in their annual
 8 reports posted to the Fund's website.

9 51. Plaintiff and the members of the Class have no reason to visit the
 10 Fund's website, as the Fund typically communicates with its beneficiaries through
 11 the mail. Defendants chose not to mail notice of the Service Fee and the Data
 12 Purchase and Sales Agreement to Plaintiff and Class members' physical addresses
 13 in order to conceal their breach of fiduciary duty.

14 52. Prior to 2013, the year the Service Fee was implemented, hard copies
 15 of the Annual Report were mailed to beneficiaries. Once the Service Fee was
 16 implemented, and the Defendants sought to keep the Beneficiaries in the dark, the
 17 Annual Reports were concealed on the Fund's website and hard copies were no
 18 longer mailed.

19 53. Even if the alleged publication in a corner of Defendant's website is
 20 taken into account, the Annual Reports themselves also cannot constitute "notice" of
 21 the Service Fee in any event. The Annual Reports contain "statements of assets,
 22 liabilities, and net assets." Instead of labeling the Service Fee as such on the
 23 statements, the Fund describes the Service Fee as a "Related Party Transaction," and
 24 the existence of the Service Fee is not clearly stated. Plaintiff and the members of
 25 the Class did not and would not understand that these "Related Party Transactions"
 26 are based on a set percentage of the Fund corpus and not in exchange for services
 27 actually rendered. There is no accounting for the Service Fee, or any other
 28 explanation of the specific expenses, charges, or work done that would justify or

1 explain the Service Fee to the beneficiaries in any manner whatsoever. This
2 concealment of the Service Fee and the Data Purchase and Sales Agreement was
3 done to inure to the benefit of the Unions and Trustee Defendants, and to conceal
4 the true facts from Plaintiff and members of the Class. Plaintiff and the Class
5 Members were entitled to rely on the Trustees as their fiduciaries, particularly when
6 the Trustees informed Plaintiff of financial matters and information which only the
7 Trustees controlled.

8 54. In addition, the Trustees' breaches of their fiduciary duties as described
9 herein constitute continuing wrongs such that the statute of limitations on these
10 breaches of fiduciary duty claims of Plaintiff and the Class has been tolled and will
11 not begin to run until the commission of the last wrongful act of the Trustees.

FIRST CAUSE OF ACTION

Breach of Fiduciary Duty for Implementing Service Fee

(Against the Trustee Defendants On Behalf of Plaintiff and the Class)

15 55. Plaintiff incorporates the preceding and subsequent allegations as if
16 fully set forth herein.

17 56. The Trustees are fiduciaries with regard to the Fund pursuant to, among
18 other authorities, the Agreement and Declaration of Trust dated September 16, 1998
19 as amended and restated July 26, 2012, and the statutory framework proscribing
20 their authority. As fiduciaries, the Trustees owe to Plaintiff and the Class, as
21 beneficiaries, fiduciary duties of loyalty, reasonableness and good faith, diligence
22 and prudence, to act solely in the interests of Plaintiff and the Class and to treat the
23 Union and non-union members of the Class equally and impartially.

24 57. The Trustees have a duty to deal impartially with the Union
25 beneficiaries and non-Union beneficiaries. The non-Union beneficiaries have
26 elected not to become members of the Unions. Despite this election, the Defendants
27 implemented the Service Fee which wrongfully takes a large percentage of funds
28 due to non-Union beneficiaries, and transfers it to the Unions to which they have no

1 connection.

2 58. Defendants have further violated their duty of impartiality to non-union
3 members of the Class, including Plaintiff, because the Unions maintain no
4 information for non-union beneficiaries and therefore have nothing of value to
5 exchange for the Service Fee. Therefore, on its face, the Data Purchase and Sales
6 Agreement violates the Defendants' duties to non-union members because the
7 Unions maintain no information for non-union members and therefore have no
8 information to sell to the Fund. The Unions have not provided any information to
9 the Fund with regard to non-union members, and the Trustees knew that the Unions
10 would have no information to provide regarding non-Union members, including
11 failing to provide access to session reports and B-forms or other similar databases.

12 59. The Trustees control substantial Royalties that are owed by statute, the
13 implementing regulations, the Trust Agreement, and applicable law to Plaintiff and
14 the Class. This money belongs to Plaintiff and the Class, not to the Fund or the
15 Trustees. Furthermore, Plaintiff and the Class reasonably expect that the Trustees
16 will in the future collect additional Royalties owed to them and the Trustees will
17 likewise fail to distribute those Royalties to them.

18 60. As set forth above, by implementing the Service Fee, the Trustees have
19 effectively refused to pay to Plaintiff and the Class the full amount of money owed
20 to them.

21 61. The Trustees implemented the Service Fee to benefit the Unions to
22 which they are employed and receive financial benefit from.

23 62. The implementation of the Service Fee constitutes breach by the
24 Trustees of their fiduciary duties of loyalty, reasonableness and good faith, diligence
25 and prudence, and to act solely in the interests of Plaintiff and the Class, who are
26 beneficiaries of the Fund. The Trustees' conduct is under significant conflict of
27 interest and damages the interests of the Union and non-union non-featured
28 performers. The conduct of the Trustees in implementing the Service Fee also

1 breaches their fiduciary duty to treat all members impartially without regard to
2 union membership. The Trustees' breaches of their fiduciary duties have
3 proximately caused damages to Plaintiff and the Class in the amount of the
4 Royalties owed to but not paid to them, which upon information and belief, exceeds
5 millions of dollars to date and continues to accrue to Plaintiff's and the Class's
6 detriment.

7 63. Defendants' conduct as described herein was done with a conscious
8 disregard of the rights of Plaintiff and Class Members, with the intent to vex, annoy,
9 and/or harass them and to unjustly profit at their expense. Such conduct was
10 unauthorized and constitutes oppression, fraud, and/or malice under California Civil
11 Code § 3294, entitling Plaintiff and the Class Members to an award of punitive
12 damages in an amount to punish or set an example of the Defendants in an amount
13 to be determined at trial.

SECOND CAUSE OF ACTION

Money Had and Received

(Against All Defendants On Behalf of Plaintiff and the Class)

17 | 64. Plaintiff incorporates the preceding and subsequent allegations as if
18 | fully set forth herein.

19 65. As stated above, in their official capacities, the Trustees and the Unions
20 have received and currently retain Royalties belonging to Plaintiff and the Class
21 which, upon information and belief, is in excess of \$5,000,000.00 million and
22 continues to accrue. The Trustees and the Unions have benefitted from receipt of
23 that money. The Royalties collected belong to Plaintiff and the Class, not to the
24 Unions.

25 66. The Trustees and the Unions are indebted to Plaintiff and the Class for
26 their rightful share of the money had and received by the Trustees and the Unions
27 for the benefit and use of Plaintiff and the Class.

THIRD CAUSE OF ACTION

Declaratory Relief

(Against All Defendants On Behalf of Plaintiff and the Class)

67. Plaintiff incorporates the preceding and subsequent allegations as if fully set forth herein.

6 68. The Trustees are obligated to distribute 100% of the Royalties received
7 to beneficiaries of the Trust except for provable and substantiated “reasonable costs”
8 necessarily incurred under 17 U.S.C. § 114(g)(3). Instead, the Trustees have
9 unreasonably and wrongfully diverted three percent of the funds to the Unions to the
10 detriment of Plaintiff and the Class.

11 || 69. Plaintiff and the Class have no adequate remedy at law.

12 70. By reason of the foregoing, there is a present and existing controversy
13 by and between Plaintiff and the Class, on one hand, and the Unions and the
14 Trustees, on the other hand, with respect to which this Court should enter a
15 declaratory judgment determining that the statutory scheme prohibits the Trustees
16 from diverting three percent of the Royalties collected to the Unions, and declare the
17 Data Purchase and Services Agreement void and unenforceable.

FOURTH CAUSE OF ACTION

Conversion

(Against All Defendants On Behalf of Plaintiff and the Class)

21 71. Plaintiff incorporates the preceding and subsequent allegations as if
22 fully set forth herein.

23 72. At all relevant times, Plaintiff and the Class had ownership rights in, or
24 the right to possess, specific sums of the Fund's collections. These specific sums are
25 capable of identification through an accounting of the Fund's records.

26 73. The Unions and the Trustees of the Fund have wrongfully exercised
27 control over Plaintiff and Class Members' rights in the Fund.

28 74. The Unions and the Trustees intentionally and substantially interfered

1 with Plaintiff's and Class Members' rights by implementing a Service Fee which
2 prevented Plaintiff and the Class from accessing the full amount of their rightful
3 property. This is especially true for non-Union Class Members who receive no
4 benefits from Union membership.

5 75. Plaintiff and the Class did not consent to the Defendants' actions as
6 described above.

76. Plaintiff and the Class suffered harm through the Defendants' actions.

8 77. The Defendants' conduct was a substantial factor in causing Plaintiff's
9 and Class Members' harm.

10 78. By reason of the foregoing, Plaintiff and Class Members have suffered
11 damages in an amount to be determined at trial. Plaintiff and Class members are
12 entitled to actual damages sustained as a result of the Trustee's wrongful acts,
13 including an award sufficient to compensate Plaintiff and Class Members for all
14 harm suffered as a result of the Defendants' conduct, and punitive damages.

15 79. Defendants' conduct as described herein was done with a conscious
16 disregard of the rights of Plaintiff and Class Members, with the intent to vex, annoy,
17 and/or harass them and to unjustly profit at their expense. Such conduct was
18 unauthorized and constitutes oppression, fraud, and/or malice under California Civil
19 Code § 3294, entitling Plaintiff and the Class Members to an award of punitive
20 damages in an amount to punish or set an example of the Defendants in an amount
21 to be determined at trial.

PRAYER FOR RELIEF

23 || WHEREFORE, Plaintiff prays for judgment as follows:

24 a. For an order certifying this action as a class action pursuant
25 California Code of Civil Procedure § 382 and appointing Plaintiff as the
26 representative of the Class and his counsel as Class Counsel;

27 b. A declaration that Defendants are financially responsible for
28 notifying all Class Members that the Service Fee was unauthorized;

c. An injunction requiring the Trustees to cease collection of the Service Fee on all future distribution cycles;

3 d. An injunction prohibiting any further dissemination of monies
4 from the Fund to the Unions for the Service Fee or any other purpose unless
5 specifically authorized by law;

6 e. An award to Plaintiff and the Class of damages in an amount to
7 be proven at trial;

8 f. An award of punitive damages on the Breach of Fiduciary Duty
9 and Conversion causes of action;

10 g. Judgment against the Trustees in their individual capacities
11 requiring them to reimburse the Fund for any of its assets they used in
12 unsuccessfully defending the breach of fiduciary claims against them;

15 i. For an order awarding Plaintiff's pre-judgment and post-
16 judgment interest;

17 j. For an order awarding Plaintiff's reasonable attorney fees and
18 costs of suit, including expert witness fees, as allowed by law; and

22 | DATED: November 19, 2018 Respectfully submitted,

KIESEL LAW LLP

By: /s/ Paul R. Kiesel

PAUL R. KIESEL

MARIANA A. MCCONNELL

ATTORNEYS FOR PLAINTIFF AND THE CLASS

JOHNSON & JOHNSON LLP

By: /s/ Neville L. Johnson

NEVILLE L. JOHNSON

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Attorneys for Plaintiff and the Class

JURY DEMAND

Plaintiff demands a trial by jury for all issues so triable.

DATED: November 19, 2018 Respectfully submitted,

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